

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1104 of 1996

in

SPECIAL CIVIL APPLICATION NO 5622 of 1995

AND

LETTERS PATENT APPEAL NO. 1105 of 1996

IN

SPECIAL CIVIL APPLICATION NO. 5614 of 1995

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE G.D.KAMAT and
MR.JUSTICE C.K.THAKKER

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

CHHANALAL JAYANTILAL SHAH

Versus

T D O

Appearance:

MR YN OZA for Petitioner
MR HS MUNSHAW for Respondent No. 1
SERVED BY DS for Respondent No. 2

CORAM : THE CHIEF JUSTICE G.D.KAMAT and
MR.JUSTICE C.K.THAKKER

Date of decision: 27/09/96

ORAL JUDGEMENT(Per G.D.Kamat,C.J.)

Admit. By consent to be heard forthwith.

These two appeals can be conveniently disposed of under a common order as they arise on common facts and out of similar orders.

2. Each of the appellants instituted Special Civil Application apprehending that their services would be terminated and recovery of money may be made against them. Brief history of the matter is that the appellant in LPA no. 1104 of 1996 was appointed as a driver and the appellant in LPA no. 1105 of 1996 was appointed as workcharged clerk of Deodar Taluka, way back in the year 1986. At the same time, it is common ground that the Taluka Panchayat revised their wages and paid Rs. 1500/-per month from 1.7.91.

It appears, an audit objection was raised about the initial appointment of each of the appellants and the Audit party directed the Taluka Panchayat to take appropriate action against the appellants including recovery of a sum of Rs. 21210/- being the amount overpaid to them when their salary was revised at Rs. 1500/- per month.

3. Both the Special Civil Applications did not carry any favour with the learned Single Judge of this Court with the result, on 9th September, 1996 she dismissed the same summarily. Upon this, it is common ground that by the order dated 16th September, 1996 the services of each of the appellants are terminated.

4. The appellants challenge the order of the learned Single Judge dismissing the Special Civil Applications. Several contentions are raised by the learned advocate Mr. Rawal, including a grievance that the petitions were disposed of on 9th September, 1996 when the counsel was not present in the Court. It is also contended that eventhough it is held that initial appointment of the appellants in the year 1986 and 1989 respectively was not after calling for applications from Employment Exchange, nevertheless, the fact remains that vacancies are available and it is open to the Taluka Panchayat to regularise their services, if not, at least, to continue the services, until the regular appointees

are selected in accordance with the procedure required to be followed. For that matter, it was also contended that recovering any amount from the appellants would entail into great hardship to them as in any case, they have rendered services to Taluka Panchayat on the respective posts.

5. It is not possible to accept that orders of termination made in relation to the appellants' services could in any manner, be faulted with, as their very initial appointment to the public posts was not in accordance with required procedure. It is therefore, difficult to accede to their grievance as against termination of their services. The further fact remains that their Special Civil Applications were rejected on 9th September, 1996 the services of the appellants were terminated on 16.9.1996, with the result that they are no more in service. Though, an attempt is sought to be made on their behalf, that the appellants could be continued on the respective posts, until the regularly selected candidates are appointed, we are not agreeable to give such a direction as in any event, their services stood terminated soon after orders were made by the learned Single Judge. But there is however, a point made by Mr. Rawal, their learned counsel that once ad hoc appointees are removed, there is no question of appointment of fresh ad hoc appointees in their place. We therefore, make it clear that in any event, if Taluka Panchayat needs these posts, they will have to adopt the procedure for making necessary appointments.

The last point that requires our consideration is whether the respondents could be now permitted to make any recovery from each of the appellants. The fact remains that the appellants were appointed some time in the year 1986 and 1989 and their scale was revised to Rs. 1500/- by resolution dated 1.7.1991 of the Taluka Panchayat. The fact remains that they have rendered services from 1.7.1991 until their services came to be terminated on 16.9.1996. Being placed in this situation, we do not find that the respondents can now be allowed to recover the so called difference between rightful pay and the revised pay of Rs. 1500/- per month.

6. In this view of the matter, a direction is necessary to be made to the respondents not to recover a sum of Rs. 21210/- from each of the appellants or any part thereof. The appeals are partly allowed to the extent indicated. The impugned orders of the learned Single Judge dated 9.9.1996 to the extent stand modified.

There shall be no order as to costs. LPAs are disposed of.

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